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8 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
9 AT TACOMA

10 ROBYN BROOKS,

11 Plaintiff,

12 v.

13 USAA CASUALTY INSURANCE  
14 COMPANY,

15 Defendant.

CASE NO. 19-5630 RJB-BAT

ORDER ON PLAINTIFF'S  
MOTION FOR REMAND

16 THIS MATTER comes before the Court on the Plaintiff's Motion for Remand to State  
17 Court. Dkt. 13. The Court has considered the pleadings filed regarding the motion and the  
18 remaining file.

19 Originally filed in Pacific County, Washington Superior Court, this case asserts claims  
20 against Defendant USAA Casualty Insurance Company ("USAA") arising from injuries  
21 sustained by its insured in a car accident with an uninsured motorist. Dkt. 1-6. USAA removed  
22 the case to this Court based on the diversity of the parties' citizenship and the amount in  
23 controversy, pursuant to 28 U.S.C. § 1332(a). Dkt. 1. The Plaintiff now moves to remand the  
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1 case, asserting that USAA has failed to show that the amount in controversy is more than  
2 \$75,000. Dkt. 13. For the reasons provided below, the motion to remand (Dkt. 13) should be  
3 granted.

#### 4 I. FACTS

5 According to the Complaint, at the relevant time, Plaintiff was an insured driver under a  
6 policy issued by USAA, which included benefits for personal injuries sustained in an accident  
7 with an uninsured motorist. Dkt. 1-6. The policy included personal injury protection (“PIP”)   
8 benefits. *Id.* The Complaint asserts that while USAA has paid some of the medical expenses it  
9 was obligated to pay, it has not paid \$4,100 in medical expenses that it should pay under the  
10 policy’s PIP benefits. Dkt. 1-6, at 7. The Plaintiff makes Washington state law claims for  
11 insurance bad faith, breach of fiduciary duty, breach of contract, violation of the Insurance Fair  
12 Conduct Act, RCW 48.30, *et. seq.*, (“IFCA”), violation of the Consumer Protection Act, RCW  
13 19.86, *et. seq.* (“CPA”), and negligence. *Id.*, at 8-10. The Plaintiff seeks damages, including  
14 treble damages under the CPA, attorneys’ fees, and costs. *Id.*, at 10.

15 The notice of removal states that on July 1, 2019, the Plaintiff served her responses to  
16 USAA’s First Requests for Admission. Dkt. 1. The first request for admission provided: “Admit  
17 that the damages YOU claim in YOUR COMPLAINT against USAA CIC in this action  
18 inclusive of any attorney's fees, economic damages, non-economic damages, statutory damages,  
19 or otherwise, do not exceed \$75,000.01?” Dkt. 1-1, at 4 (*emphasis in original*). The Plaintiff  
20 responded “deny.” *Id.* USAA removed the case on July 10, 2019. Dkt. 1.

21 The Plaintiff moves to remand the case. Dkt. 13. She argues that, while the parties are  
22 completely diverse in their citizenship, the \$75,000 in controversy amount (as required by 28  
23 U.S.C. § 1332 (a)) is not met. *Id.* The Plaintiff seeks attorneys’ fees and costs incurred in filing  
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1 the motion to remand. *Id.* USAA opposes the motion. Dkt. 17. In her reply, the Plaintiff states  
2 that she provided her Initial Disclosures to USAA on August 30, 2019, which was the date  
3 USAA filed its response. Dkt. 21, at 1, n. 1. She maintains that “[t]hese disclosed less than  
4 \$5000.00 in unpaid PIP benefits at issue in this matter.” *Id.* The motion is ripe for review.

## 5 **II. DISCUSSION**

6 Removal of a case from a state court to a United States District Court is governed by the  
7 provisions of 28 U.S.C. §§ 1441 and 1446. Section 1441 provides, in relevant part, as follows:

8 Except as otherwise expressly provided by Act of congress, any civil action  
9 brought in a State court of which the district courts of the United States have  
10 original jurisdiction, may be removed by the defendant or defendants, to the  
district court of the United States for the district and division embracing the place  
where such action is pending. . .

11 28 U.S.C. § 1441(a). USAA asserts that this court has original jurisdiction in this case under §  
12 1332 (a) because of the diversity of the parties’ citizenship and the amount in controversy. Dkt.  
13 1. Section 1332 (a) provides that diversity jurisdiction exists only “where the matter in  
14 controversy exceeds the sum or value of \$75,000, exclusive of interests and costs.” 28 U.S.C. §  
15 1332 (a). Under 28 U.S.C. § 1446 (c)(2),

16 If removal of a civil action is sought on the basis of the jurisdiction conferred  
17 by section 1332 (a), the sum demanded in good faith in the initial pleading  
shall be deemed to be the amount in controversy, except that –

18 (A) the notice of removal may assert the amount in controversy if the  
19 initial pleading seeks -

20 (i) nonmonetary relief; or

21 (ii) a money judgment, but the State practice either does not permit  
22 demand for a specific sum or permits recovery of damages in excess of  
the amount demanded; and

23 (B) removal of the action is proper on the basis of an amount in  
24 controversy asserted under subparagraph (A) if the district court finds, by

1 the preponderance of the evidence, that the amount in controversy exceeds  
2 the amount specified in section 1332(a).

3 28 U.S.C. § 1446. Accordingly, “when a defendant seeks federal-court adjudication, the  
4 defendant’s amount-in-controversy allegation should be accepted when not contested by the  
5 plaintiff or questioned by the court.” *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S.  
6 Ct. 547, 553 (2014). When, as here, the plaintiff contests the defendant’s assertion, “the  
7 removing defendant bears the burden of establishing, by a preponderance of the evidence, that  
8 the amount-in-controversy exceeds the jurisdictional threshold.” *Chavez v. JPMorgan Chase &*  
9 *Co.*, 888 F.3d 413, 416 (9th Cir. 2018)(*internal quotation marks and citation omitted*). Section  
10 1332 (a)’s amount-in-controversy requirement includes claims for damages and attorneys’ fees.  
11 *Chavez*, at 416 and *Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 700 (9th Cir.  
12 2007)(holding “amount-in-controversy requirement excludes only ‘interest and costs’ and  
13 therefore includes attorneys’ fees”).

14 Plaintiff’s motion to remand the case to Pacific County, Washington Superior Court (Dkt.  
15 13) should be granted. The Plaintiff now states, in her Initial Disclosures, and in her pleadings  
16 filed with this Court that less than \$5,000 of unpaid benefits are at issue in this case. Even with  
17 the statutory treble damages provisions, it has now been demonstrated, by a preponderance of the  
18 evidence, the amount-in-controversy, including attorneys’ fees, is less than \$75,000. While the  
19 Defendant properly points out that there were substantial grounds, at the time of removal, to  
20 believe that the amount in controversy was over \$75,000, it is now clear that is not the case.  
21 Pursuant to 28 U.S.C. § 1447 (c), “[i]f at any time before final judgment it appears that the  
22 district court lacks subject matter jurisdiction, the case shall be remanded.” This Court no longer  
23 has subject matter jurisdiction, so the Plaintiff’s motion for remand should be granted. The case  
24 should be remanded to Pacific County, Washington Superior Court.

1 A court may reward reasonable attorney's fees and costs incurred by the party seeking  
2 remand. 28 U.S.C. § 1447(c). However, "[a]bsent unusual circumstances, courts may award  
3 attorney's fees under § 1447(c) only where the removing party lacked an objectively reasonable  
4 basis for seeking removal. Conversely, when an objectively reasonable basis exists, fees should  
5 be denied." *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 141 (2005).

6 The Plaintiff's motion for attorneys' fees and costs for having to bring this motion to  
7 remand (Dkt. 13) should be denied. At the time of removal, there was some indicia that the  
8 amount in controversy here could exceed \$75,000.00. USAA did not "lack an objectively  
9 reasonable basis for removal." *Martin*, at 141. Attorneys' fees and costs should not be awarded.

### 10 III. ORDER

11 It is **ORDERED** that:

- 12 • The Plaintiff's Motion for Remand to State Court (Dkt. 13) **IS GRANTED**, as to the  
13 motion to remand and **DENIED**, as to the motion for attorneys' fees and costs; and
- 14 • This case **IS REMANDED** to Pacific County, Washington Superior Court.

15 The Clerk is directed to send uncertified copies of this Order to all counsel of record and  
16 to any party appearing *pro se* at said party's last known address.

17 Dated this 10<sup>th</sup> day of September, 2019.

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19 ROBERT J. BRYAN  
20 United States District Judge